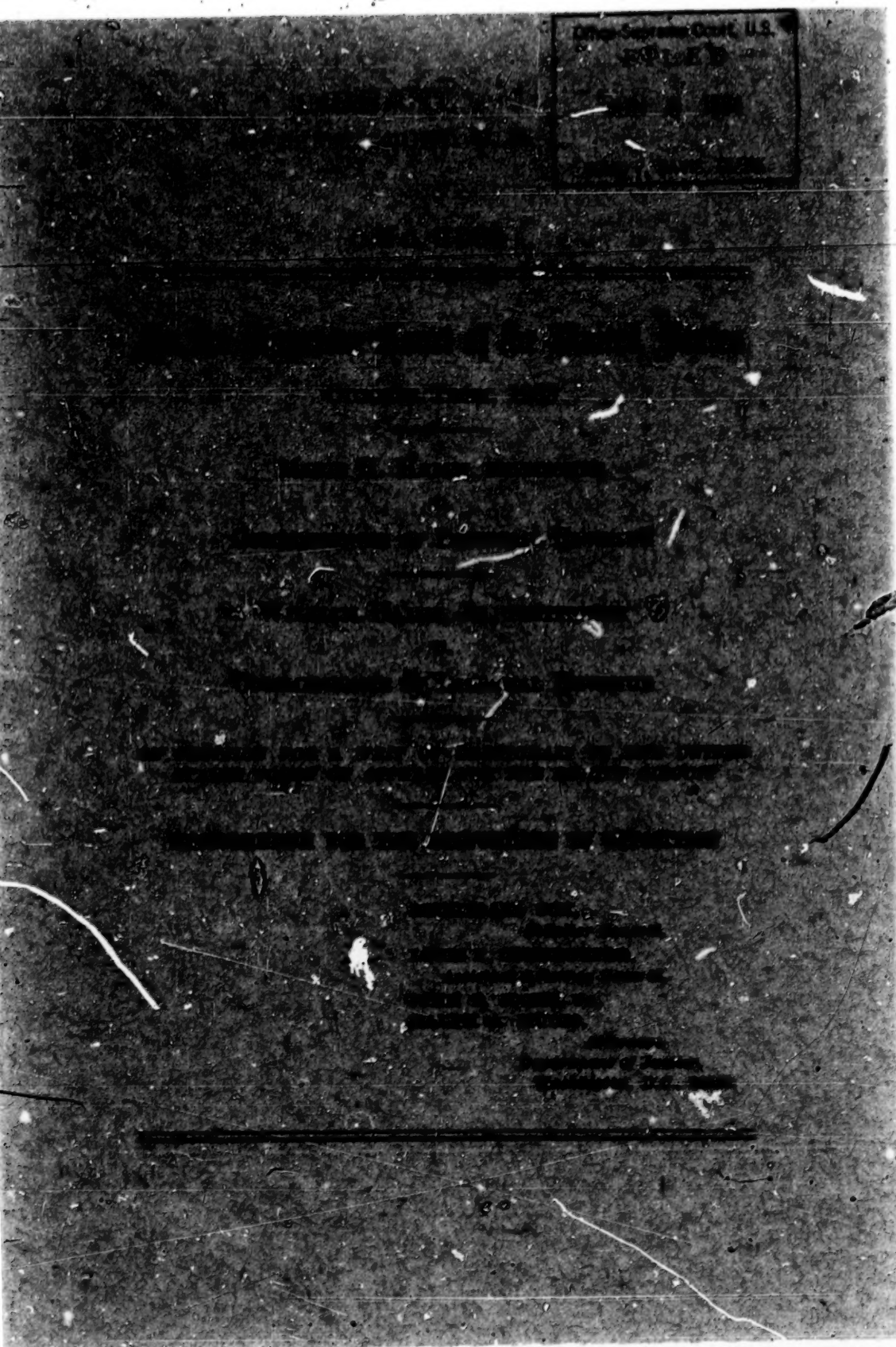

In the Supreme Court of the United States

OCTOBER TERM, 1963

MARIE H. HAMM, PETITIONER

v.

COMMISSIONER OF INTERNAL REVENUE

WILLIAM HAMM, JR., PETITIONER

v.

COMMISSIONER OF INTERNAL REVENUE

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

MEMORANDUM FOR THE RESPONDENT IN OPPOSITION

This case involves the valuation for gift tax purposes of 263⅓ shares of stock in a closely-held corporation. The question presented is whether both courts below erred in holding that the taxpayers failed to carry their burden of proving that the Commissioner's determination of value was incorrect. The question is a factual one. The decision below is correct and there is no conflict of decisions nor other basis for further review by this Court.

The Commissioner determined that the stock had a fair market value of $8,506.40 per share. (Pet. 19.)

This determination was presumptively correct and the burden of proving it wrong rested on the taxpayers. *Commissioner* v. *Hansen*, 360 U.S. 446, 468; *Helvering* v. *Taylor*, 293 U.S. 507, 515. After analyzing a voluminous record and taking into account the testimony of expert witnesses, the Tax Court concluded that the taxpayers had failed to establish error in the Commissioner's determination of value. (Pet. 19–20.) In affirming the Tax Court, the Court of Appeals noted (1) that the underlying net asset value of the stock was in excess of $11,500 per share, (2) that the taxpayers had conceded the validity of this underlying asset figure, (3) that the difference between the underlying asset figure and the determined value of $8,506.40 was in excess of $3,000, and (4) that the Tax Court had taken into consideration an impressive list of factors in making its ultimate finding of value and in weighing the value opinions expressed by several expert witnesses. (Pet. 22–23.) The finding by both courts below, that taxpayers had failed to prove that the Commissioner's determination was erroneous, is final and will not be reviewed by this Court in the absence of a very exceptional showing of error. *Comstock* v. *Group of Investors*, 335 U.S. 211, 214; *Corn Products Co.* v. *Commissioner*, 350 U.S. 46, 51.

Taxpayers' contention that the Tax Court did not find the facts specially and did not disclose the formula by which it arrived at its ultimate finding is without merit. The Tax Court's finding that the stock was worth not less than $8,506.40 per share was sufficient (*Richardson* v. *Commissioner*, 151 F. 2d 102,

105 (C.A. 2d); *Gross* v. *Commissioner*, 92 F. 2d 621, 622 (C.A. 7th)) and, beyond an exposition as to basic questions of methodology, it is impractical to require the trier of fact to assign to each particular factor a precise weight or to define its relative emphasis or importance in a total equation of value (II Paul, *Federal Estate and Gift Taxation* (1942), p. 1217; *In re Nathan's Estate*, 166 F. 2d 422, 425 (C.A. 9th); *Gloyd* v. *Commissioner*, 63 F. 2d 649, 652 (C.A. 8th), certiorari denied, 290 U.S. 633; *Collins* v. *Commissioner*, 216 F. 2d 519, 522 (C.A. 1st); *Snyder's Estate* v. *United States*, 285 F. 2d 857, 861 (C.A. 4th); *Penn* v. *Commissioner*, 219 F. 2d 18, 21 (C.A. 9th)). Taxpayer's only affirmative evidence supporting a lower value came from appraisals based upon estimates of future earnings and dividends. The Tax Court specifically and at length set forth the grounds for rejection of earnings, considered alone, as a reliable criterion of value in the particular circumstances of this closely held corporation (Op. pp. 55–57). The Eighth Circuit agreed (Pet. 28) and no more specific treatment could reasonably be required.

Equally without merit is taxpayers' contention that the instant case is in conflict with other decisions of other courts of appeals and with a decision of this Court. In *Cohen* v. *Commissioner*, 266 F. 2d 5 (C.A. 9th); *MacCrone's Estate* v. *Commissioner*, 264 F. 2d 621 (C.A. 4th); and *Timmons* v. *Commissioner*, 198 F. 2d 142 (C.A. 4th), the Commissioner's determination was shown to be invalid, the presumption of correctness was thereby destroyed, and the burden

of proof shifted to the Commissioner—a situation not present here. The same distinction exists in *Gersten* v. *Commissioner*, 267 F. 2d 195 (C.A. 9th), where the core of the holding was that the Tax Court's result rested entirely upon sheer speculation. (Pet. 26–27.) Even more inapposite is this Court's recent decision in *United States* v. *Merz*, 376 U.S. 192, an eminent domain case dealing with the report of a lay commission appointed under Rule 71A(h) of the Federal Rules of Civil Procedure to find "just compensation."

The petition for a writ of certiorari should be denied.

Respectfully submitted.

ARCHIBALD COX,
Solicitor General.
LOUIS F. OBERDORFER,
Assistant Attorney General.
JOHN B. JONES, JR.,
RALPH A. MUOIO,
Attorneys.

JUNE 1964.

U.S. GOVERNMENT PRINTING OFFICE 1964